IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7055 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GSRTC - Petitioner(s)

Versus

DASRATHBHAI AMBALAL SOLANKI - Respondent(s)

==========

Appearance :

MR UI VYAS for Petitioner No(s).: 1.

MR GK RATHOD for Respondent No(s).: 1.

==========

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 30/06/2005

CAV **JUDGMENT**

1.By filing this petition, the petitioner has prayed for a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction

quashing and setting aside the judgment and award passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 310 of 1993 dated 31.08.2000, whereby the Industrial Tribunal, passed the order to grant the benefit of time scale on the completion of 180 days service in next year after 1.10.2000 considering the seniority from 08.06.1991 as rojamdar.

2. It appears from the record that concerned workman was appointed as a casual labourer from 08.06.1991 and was working with Civil Engineering Department of petitioner – Corporation and for more than 25 days of work was taken from the respondent workman by the Corporation. It also appears that since the benefit of permanency has not been granted to the respondent workman by the petitioner corporation, the respondent workman raised industrial dispute by way of Reference (IT) No. 310 of 1993 praying for the regularization. The Industrial Tribunal, after considering documentary evidence as well as after hearing both the sides, passed the order directing the petitioner corporation to grant the benefit of time scale on the completion of 180 days service in next year after 1.10.2000 considering the seniority from 08.06.1991 as rojamdar by its judgment and award dated 31.08.2000. Being aggrieved and dissatisfied with the said judgment and order dated

31.08.2000, the petitioner corporation has filed this petition under Article 226/227 of the Constitution of India for the aforesaid relief.

3. Heard the learned advocates for the parties.

4. It is submitted by Mr.U.I.Vyas, learned advocate for the petitioner that the respondent workman was never appointed on regular and permanent post by the petitioner but he was appointed as a daily wager in the construction department. It is further submitted that the settlement arrived at between the workman and the petitioner corporation is not applicable to the case of the respondent in view of the fact that the respondent workman is a daily wager and purely appointed on ad hoc basis. He submitted that since the respondent workman is appointed on purely daily wages basis, he cannot be regularized in service. It is therefore requested to allow the present petition by quashing and setting aside the impugned judgment and award dated 31.08.2000 passed by the Industrial Tribunal, Ahmedabad.

5. On the other hand, Mr.Rathod, learned advocate appearing for the respondent has submitted that the respondent was appointed as a casual labourer from 08.06.1991 and was working with the Civil Engineering Department of the petitioner corporation. He submitted that the impugned judgment and award is just and proper

and no interference of this Court is called for. Relying upon the decision reported in 1999(1) GLH 760, he submitted that a person cannot be continued for a long time as a daily wager and the corporation has to pay the minimum pay scale of the category to the workman, failing which it would be amount to unfair labour practice. It is therefore requested to dismiss the petition.

6. The present petition is filed against the judgment and award passed by the Industrial Tribunal dated 31.08.2000 in Reference (IT) No. 310 of 1993 which was raised by the respondent workman since the benefit of permanency has not been given by the petitioner corporation without any reason or justification. The Tribunal, after appreciating the evidence on record, has come to the conclusion that the respondent workman is working with the petitioner corporation since 1991 and as stated by the corporation, the respondent workman is being paid by hand receipt. It is also recorded by the Tribunal that under the guise of hand receipt, the corporation has taken the work continuously from the respondent workman and the said work is continued even till the impugned judgment and award passed by the Tribunal.

7. It is an admitted position that the respondent workman

was and is in daily wage employment. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. In such type of cases, the employment is given first for temporary periods with technical breaks to circumvent the relevant rules and the same is continued for 240 days or more days with a view to give the benefit of regularisation. Ultimately, it is the people who bear the heavy burden of the surplus labour. It is required to be noted that for regularisation, there must be regular and sanctioned posts. It is to be noted here that at the most it can be for the petitioner Corporation to keep the petitioner on panel and if the respondent workman is qualified for the relevant post, he may be given preference in employment whenever there occurs a vacancy in the regular post. In this view of the matter, I am of the opinion that the Industrial Tribunal, Ahmedabad has committed an error in passing the judgment and award dated 31.8.2000.

8. Under the circumstances, the judgment and award passed by the Industrial Tribunal, Ahmedabad dated 31.8.2000 in Reference (IT) No.310 of 1993 deserves to be quashed and set aside. Accordingly, this petition is allowed.

The judgment and award passed by the Industrial Tribunal, Ahmedabad dated 31.8.2000 in Reference (IT) No.310 of 1993 is quashed and set aside. Rule is made absolute with no order as to costs.

(Sharad D.Dave,J)

srilatha